



United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

December 3, 2013

BY ECF

MEMO ENDORSED

Hon. Ronnie Abrams
United States District Judge
Thurgood Marshall United States Courthouse
Room 2203
40 Foley Square
New York, NY 10007

USDC-SDNY
DOCUMENT
ELECTRONICALLY FILED
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DATE FILED: <u>12/5/13</u>

Re: *Tanvir v. Comey et al.*, 13 Civ. 6951(RA)

Dear Judge Abrams:

I write respectfully on behalf of defendants James Comey, Director of the Federal Bureau of Investigation (“FBI”); Christopher M. Piehota, Director of the Terrorist Screening Center; Acting Secretary of Homeland Security Rand Beers; John S. Pistole, Administrator of the Transportation Security Administration; and four individual FBI agents¹ (collectively, “defendants”) in the above-referenced action. Defendants request that the Court adjourn the initial conference presently scheduled for December 13, 2013, and the associated deadline for submission of a pre-conference letter, pending plaintiff’s anticipated filing of an amended complaint. To allow defendants to file a coordinated response to the amended complaint, defendants further request that their time to answer or otherwise respond to the complaint be adjourned until 60 days after service of the summons and complaint on the named FBI agents, and no later than March 31, 2014, for defendants as to whom service has been perfected.

The Complaint and Procedural Posture

According to the complaint filed on October 1, 2013, plaintiff Muhammad Tanvir is a lawful permanent resident of the United States. Plaintiff alleges that he was placed on the federal government’s “No Fly List,” and as a result was denied boarding on commercial aircraft in 2010 and 2011, purportedly because he refused to serve as an FBI informant. Plaintiff further alleges that he filed a complaint with the Department of Homeland Security Traveler Redress Inquiry Program to challenge his alleged inclusion on the No Fly List, and subsequently was permitted to board a flight to Pakistan on June 27, 2013. Plaintiff brings claims against defendants in their official capacities, seeking declaratory and injunctive relief. He also purports to bring claims against four individual FBI agents in their personal capacities, seeking damages under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

¹ These agents are identified in the caption of the complaint as Special Agents “John” Tanzin, Sanya Garcia, John “LNU” (last name unknown), and “John Doe.”

The complaint was served by certified mail and received by this Office on October 7, 2013, during the federal government shutdown. Accordingly, pursuant to Federal Rule of Civil Procedure 12(a)(2), as modified by Chief Judge Preska's Order entitled *In re Stay of Certain Civil Cases Pending the Restoration of Department of Justice Funding*, to the extent defendants are sued in their official capacities, their answer or other response to the complaint is presently due on December 23, 2013. The individual FBI agents have not yet been served.

Adjournment Request

Defendants request adjournment of the answer and initial conference dates for two reasons. First, because the individual FBI agents have not yet been served, their time to answer or otherwise respond to the complaint has not yet begun to run. *See Fed. R. Civ. P. 12(a)(3)*. Second, plaintiff's counsel has indicated that plaintiff intends to amend the complaint in the near future. All parties agree that it would serve the interests of efficiency and judicial economy for defendants to file a coordinated response to the amended complaint, and for the Court and the parties to address the forthcoming amended complaint at the initial conference and in the pre-conference submission.

If the Court grants this adjournment request, after an amended complaint is filed, counsel for plaintiff and defendants will promptly present a proposed Revised Scheduling Order that (1) adjourns the initial conference to a date convenient to the Court approximately 45 days after the amended complaint is filed, and (2) extends the deadline for defendants to answer or otherwise respond to the complaint to a date 60 days after the date of service of the summons and complaint on the named FBI agents, and no later than March 31, 2014, for defendants as to whom service has been perfected. *See Fed. R. Civ. P. 12(a)(3)*. The parties may seek further adjustment of these proposed deadlines based on the date of filing and content of the amended complaint.

This is defendants' first request for an adjournment in this matter. Plaintiff consents to the requested adjournment. I thank the Court for its consideration of this request.

Application granted. The conference scheduled for December 13, 2013, is adjourned. After Plaintiff files his amended complaint, the parties shall submit a proposed Revised Scheduling Order as described above.

Respectfully,

PREET BHARARA
United States Attorney

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SO ORDERED:


HON. RONNIE ABRAMS
UNITED STATES DISTRICT JUDGE

12/5/13